

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

MORGAN UKPABI,

Petitioner,

CIVIL CASE NO. 06-12692

v.

MICHAEL CHERTOFF, Secretary of
Department of Homeland Security,

HONORABLE PAUL V. GADOLA
U.S. DISTRICT COURT

Respondent.

_____ /

ORDER DENYING PETITIONER'S HABEAS CORPUS PETITION

Before the Court is a habeas corpus petition filed by Petitioner Morgan Ukpabi pursuant to 28 U.S.C. § 2241. Initially, the government filed a response indicating that the petition should be denied because a stay of removal had not yet been issued. On September 19, 2006, a stay of removal was issued by the Sixth Circuit Court of Appeals. Petitioner subsequently filed a supplemental memorandum arguing that this Court could now review Petitioner's habeas corpus petition, since a stay of removal had been filed. The government filed a response to Petitioner's supplemental memorandum, arguing that consideration of the habeas corpus petition remains outside of this Court's jurisdiction. For the reasons below, the Court denies Petitioner's petition for writ of habeas corpus.

I. Background

Petitioner is a citizen of Nigeria who has been detained by immigration authorities since approximately October 25, 2005. Petitioner has been ordered by an Immigration Judge ("IJ") to be removed from the United States, and the Board of Immigration Appeals ("BIA") has affirmed the

IJ decision. Petitioner has sought review of this IJ decision requiring his removal from the United States by filing a petition to the Sixth Circuit Court of Appeals. On September 19, 2006, the Sixth Circuit Court of Appeals granted Petitioner a stay of removal pending review of the IJ order for removal. Currently, Petitioner remains in government detention during this review of Petitioner's removal proceedings.

On December 14, 2005, the IJ denied Petitioner bond for his release during the review of the removal proceedings. Petitioner subsequently appealed that decision to the BIA. On March 3, 2006, the BIA affirmed the IJ's decision and denied Petitioner bond. Petitioner then filed this habeas corpus petition on June 19, 2006, arguing that the IJ and BIA had unreasonably denied Petitioner bond.

In opposition to Petitioner's habeas corpus petition, the government argues that this Court lacks jurisdiction to review the decision of the IJ denying release of an alien awaiting removal. After a review of the record and the relevant submissions of the parties, the Court agrees with the government's position. Section 1226 of United States Code Title 8 authorizes the Attorney General to arrest and detain an alien "pending a decision on whether the alien is to be removed from the United States." 8 U.S.C. § 1226(a). The statute also permits the release of the alien on bond. The statute goes on to state: "The Attorney General's discretionary judgment regarding the application of this section shall not be subject to review. No court may set aside any action or decision by the Attorney General under this section regarding the detention or release of any alien or the grant, revocation, or denial of bond or parole." 8 U.S.C. § 1226(e). Therefore, due to the language of the statute, the Court finds that it does not have jurisdiction to review the IJ decision denying bond.

ACCORDINGLY, IT IS HEREBY ORDERED that Petitioner's habeas corpus petition
[docket entry 1] is **DENIED**.

SO ORDERED.

Dated: April 11, 2007

s/Paul V. Gadola
HONORABLE PAUL V. GADOLA
UNITED STATES DISTRICT JUDGE

Certificate of Service

I hereby certify that on April 11, 2007, I electronically filed the foregoing paper with the Clerk of the Court using the ECF system which will send notification of such filing to the following:

Robert W. Haviland; Scott Keillor, and I hereby certify that I have mailed by United States Postal Service the paper to the following non-ECF participants: _____.

s/Ruth A. Brissaud
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